

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MINNESOTA

Chambers of  
PATRICK J. SCHILTZ  
DISTRICT JUDGE

United States Courthouse  
300 South Fourth Street  
Minneapolis, Minnesota 55415  
(612) 664-5480

September 2, 2014  
Via CM/ECF

Re: *United States v. Novak*, No. 14-CR-0044 (PJS)

Dear Counsel:

I am writing to you regarding the parties' dispute concerning the application of a two-level enhancement under § 2B1.1(11) of the Sentencing Guidelines.

I agree with Mr. Novak that the mere possession of access devices or means of identification does not trigger any of the subsections of § 2B1.1(11). It appears to me, however, that the government is correct in asserting that Mr. Novak is subject to the enhancement under subsection (C)(i). Specifically, it appears to me to be undisputed that Mr. Novak engaged in "the unauthorized transfer . . . of any means of identification unlawfully to produce or obtain any other means of identification . . ." (It also appears to me that Mr. Novak could be subject to the enhancement under subsection (B)(i), but neither the PSR nor the government has made such an argument and I will therefore not address it.)

I know that the government did not raise its subsection (C)(i) argument until it filed its reply brief, and Mr. Novak has therefore not had a chance to address it. I ask that Mr. Novak be prepared to address the government's argument at the sentencing hearing tomorrow. If this is not possible, please contact my chambers as soon as possible to let me know, and I will reschedule the sentencing hearing to ensure that Mr. Novak has adequate time to prepare.

Sincerely,

s/Patrick J. Schiltz  
Patrick J. Schiltz  
United States District Judge